

In the High Court of Judicature at Madras

Dated: 22.02.2005

Coram:

The Honourable Mr. Justice S.R.SINGHARAVELU

Second Appeal No. 1117 of 1994

1. Kamalambal
2. A.Jayapal

..Appellants/Defendants 2 & 4

..vs..

Arulmigu Renuka Devi
Amman Temple, Vijayapuram,
Thiruvavarur Taluk and Munsif,
rep.by its Executive Officer

..Respondent/Plaintiff

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.06.1993 in A.S.No.8 of 1991 on the file of Sub Court, Nagapattinam, reversing the judgment and decree dated 27.02.1990 in O.S.No.133 of 1988 on the file of District Munsif Court, Thiruvavarur.

For Appellants : Mr.B.Ramamoorthy

For Respondent : Mr.T.R.Rajaraman

JUDGMENT

Second Appeal was directed against the judgment dated 30.06.1993 in A.S.8 of 1991 of the Sub Court, Nagapattinam, which reversed the judgment dated 27.02.1990 in dismissing the suit in O.S.133 of 1988 by the District Munsif, Thiruvavarur. सत्यमेव जयते

2. During the course of admission, the following substantial question of law was framed:

Whether the plaintiff can succeed on the basis of the case of the defendant without proving his own case and abandoning the same ?

3. The suit was originally filed for permanent injunction and subsequently amended as one for mandatory injunction to demolish the construction made by the defendant in the suit site, which belongs to the respondent/ plaintiff temple. The suit land is measuring 4912 sq.ft.in T.S.No.979/1 in Block No.22, Ward No.3 in Vijayapuram of

Thiruvarur; that consists of two non-residential buildings, bearing door No.22C and 22D and one residential building bearing door No.23.

4. Originally the land was an inam land to which Section 13 of Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Act 30 of 1983) was found applicable. Under Ex.A-1, there was a suo motu enquiry held by the Settlement Tahsildar, Thanjavur under the provisions of Act 30 of 83, for the purpose of grant of ryotwari patta. The notified date was taken as 15.02.1965. Arunachalam, the original defendant also took part along with the authorities of the plaintiff temple in the said enquiry. As Arunachalam subsequently expired, his legal representatives were added as the appellants in the appellate stage. It is in that Settlement Proceedings Ex.A-1, mention was made about the conveyance of permanent paguthi right and para 6 of Ex.A-1 specifically contained that what was conveyed was only the paguthi rights and the ownership of the building. It was ultimately found as follows:

"I therefore order that the buildings in the suit land shall with effect on and from the appointed day vest under section 13(1) of the Act jointly in the institution and the respondent No.1 (Arunachalam Chettiar) as determined in the Schedule".

5. According to the Settlement Proceedings, the title in the suit building vest jointly in the institution and the appellants' predecessor by name Arunachalam. Thus the appellants will be entitled to 50% of the building while the other 50% remain vested with the respondent temple. Inasmuch as the building as a whole remains in the possession of the appellants/defendants, 50% of their possession is due to their ownership and the remaining 50% is in the capacity of a lessee. There seems to be some arrears of lease and that is why, even in the course of evidence on the side of respondent /plaintiff, it has been clearly stated that because of the pending arrears, they were necessitated to file the suit. Thus, the motive for filing the suit is the pendency of arrears, with which we are not concerned here as the suit is not for claiming arrears. From the above evidence, the leasehold right of appellants in the suit building is made known.

6. The contention of the respondent/ plaintiff is that the defendant has removed the tiled roof of the building and had changed it into concrete roof. Thus, according to the counsel for the respondent/plaintiff, this is not permissible under section 108(p) of the Transfer of Property Act. Section 108(p) of the Transfer of Property Act provides,

"In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next followed, or

such of them as are applicable to the property leased....

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes'"

7. The purpose of the building is residential and therefore, the lessee, as per the above provision, shall not without the consent of the lessor, erect on the property any permanent structure. So, what was prohibited by the provision is erection of a permanent structure in the said land without the consent of the lessor. This presupposes the existence of 'Nil' building or a temporary construction, which according to the above provision, should not be erected or constructed of a permanent nature without the lessor's consent. There is no lessor's consent herein. Therefore, if there was vacant land or that there was a temporary shed, new construction or conversion of a temporary construction into permanent structure is alone prohibited. But counsel for the appellants agreed that there was an existence of a permanent structure and the defendant had only removed the tiled roof and converted it into a concrete roof. For which, of course, there was no permission granted by the lessor. Whether this conversion of a tiled roof into a concrete roof would make the above provision applicable is depending upon the fact that the existing tiled roof shall be a temporary one. In no stretch of imagination, it can be said that tiled roof is only a temporary one. If that roof was made up of hay ricks or some leaves of coconut tree or palmyrah tree, then it may be considered as a temporary structure, which should not have been converted into either tiled or concrete roof without the consent of a lessor. Now, it is only one form of permanent structure that was converted into another form of permanent structure. This was not prohibited by section 108(p) of Transfer of Property Act nor does it expect the consent of a lessor. It is also not the case of the respondent /plaintiff that some damage had been made to the building at the risk and cost of plaintiff temple. After all, it is only an improvement to the building and no damage was either alleged, pleaded or proved.

8. In such circumstances, the finding of the appellate court that there are basic grounds for granting mandatory injunction is incorrect. Demolishing a permanent building would no way cause any advantage to the plaintiff, but in the alternative, it has only become added asset to the temple. There is no benefit for either of the parties in such demolition. It is also not as if the building is an old building, liable for demolition. Regarding the age of the building, there is no evidence. The respondent/ plaintiff should not also rely upon the weakness of the appellants/legal representatives of the defendant in getting a decree. The question of law is, accordingly, answered in favour of the appellants.

9. Second Appeal is allowed and the suit is dismissed by restoring the decree of the trial court and setting aside the decree of the first appellate court. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

- 1) The Subordinate Judge,
Nagapattinam.
- 2) The District Munsif,
Thiruvarur.

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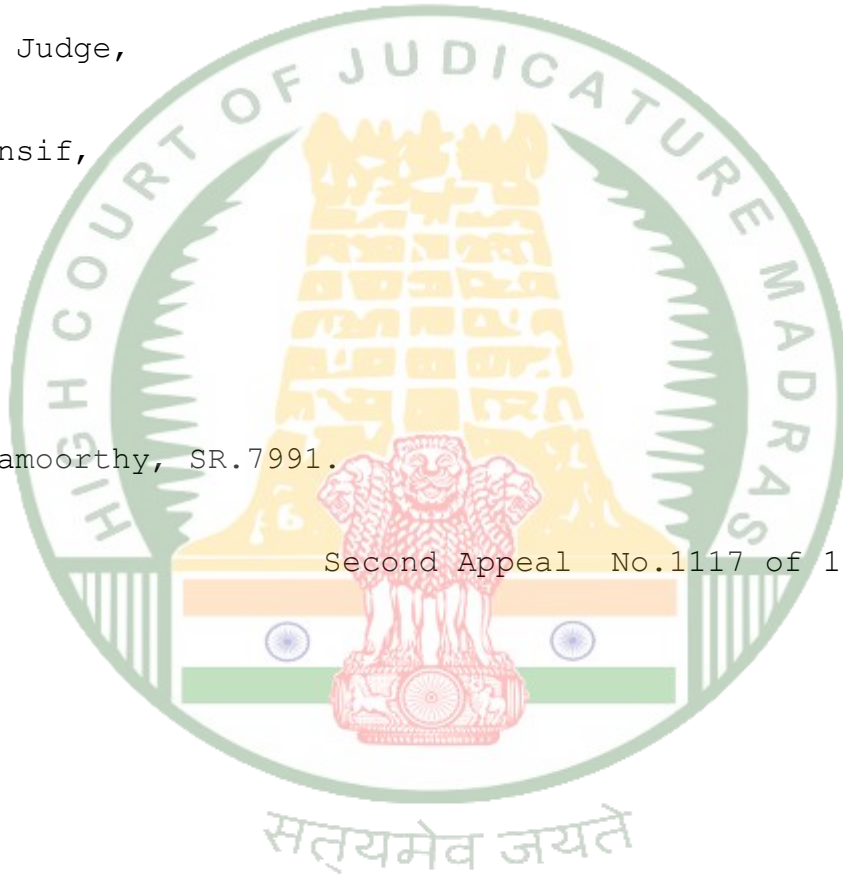
The Record Keeper,
V.R.Section,
High Court,Madras.

One cc to Mr.B.Ramamoorthy, SR.7991.

Second Appeal No.1117 of 1994

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